IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CONTROLLER OF ESTATE DUTY

Versus

R B SHAH, A P OF BHOGILAL M. SHAH (DECD.)

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference under Section 64(3) of the Estate Duty Act,1953. The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for our opinion :

"Whether, the Appellate Tribunal is right in law and on facts in accepting the claim of the accountable person that the provisions of Rule 1BB of W.T.Rules should be adopted for valuing the assets of the deceased instead of the value shown ins the W.T.Return ?"

2 This reference pertains to the assets left by Shri B.M.Shah who expired on 15/12/1976 leaving behind will dated 2/2/1976. The Accountable person claimed before the Assistant Controller of Estate Duty that the Provisions of Rule 1BB of Wealth Tax Rules should be adopted for valuing the assets of the deceased instead of the value shown in the wealth-tax return. That claim was rejected by the Assistant Controller of Estate Duty and that decision was confirmed by the Appellate Controller of Estate Duty. On further appeal, the Tribunal allowed the claim of the Accountable person and hence this reference at the instance of the revenue.

3 We have heard Mr.M.H.Joshi, learned Counsel for the revenue. Though served none appears for the respondent Accountable person.

4 Our attention is invited to the decision dated 22/02/2001 of this Court in Estate Duty Reference No. 6 of 1985. In the said decision following our decision in Estate Duty Reference No.1 of 1985 this Court has held that even though sub-section (3) was inserted in Section 36 of the Estate Duty Act with effect from 1/3/1981, the said provision read with Rule 1-BB of the Wealth Tax Rules,1957 is applicable even to proceedings under the Estate Duty Act where the death took place prior to 1/3/1981 as sub-section (3) of Section 36 of the Estate Duty Act as well as Rule 1-BB of the Wealth Tax Rules, 1957 are procedural provisions and, therefore, applicable to proceedings pending as on 1/3/1981.

5 Following the aforesaid decision our answer to the question referred to us in the affirmative i.e. in favour of the Accountable person and against the revenue.

6. The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt